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ABSTRACT

Addressed in this speech are police/minority relations problems, particularly the issue of police use of excessive force. References are made to studies and reports on the subject and the difficulty in getting adequate and substantial information on the patterns of occurrence where community friction arising from the use of excessive force is concerned. Possible circumstances contributing to the use of excessive force on the part of police officers and guidelines governing the officers' use of force are discussed. State laws limiting a police officer's use of deadly force to arrest a felony suspect are described. It is pointed out that these laws are not uniform and that the decision to use force is often left to the officer. It is also pointed out that there is a definite trend emerging that indicates local police departments are voluntarily imposing more stringent limitations on their officers than are required by State laws. Objectives of an agency effort to improve race relations by helping police departments and minority communities to better understand the implications of this issue are outlined. (EB)

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POLICE USE OF FORCE: A COMMUNITY
RELATIONS CONCERN

BY

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TO

NATIONAL ASSOCIATION OF BLACKS IN
CRIMINAL JUSTICE
SIXTH ANNUAL CONFERENCE

HILTON HOTEL
PHILADELPHIA, PENNSYLVANIA

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THANKS, JIM.

I WANT EVERYONE HERE TO KNOW THAT THERE IS NO PLACE WHERE I GET THE KIND OF INTRODUCTIONS THAT I GET IN PHILADELPHIA. WHEN I LAST SPOKE HERE IN 1977, I WAS INTRODUCED BY ALPHONSO DEAL, THE LOCAL NAACP CHAPTER PRESIDENT. AND I'M STILL WONDERING WHO HE WAS TALKING ABOUT WHEN HE INTRODUCED ME.

I AM PLEASED TO TAKE PART IN THIS CONFERENCE OF THE NATIONAL ASSOCIATION OF BLACKS IN CRIMINAL JUSTICE (NABCJ), AND TO DISCUSS POLICE-COMMUNITY RELATIONS--A SERIOUS ISSUE AFFECTING PRACTICALLY EVERY COMMUNITY IN THE NATION.

DURING RECENT YEARS, STRONG CRITICISM AND SOMETIMES VIOLENT MINORITY PROTESTS HAVE BEEN STAGED AGAINST POLICE DEPARTMENTS ALL OVER THE COUNTRY. IN FACT, POLICE/MINORITY RELATIONS PROBLEMS HAVE DOMINATED THE WORK OF MY AGENCY, THE COMMUNITY RELATIONS SERVICE--CRS--FOR EACH OF THE PAST SIX YEARS.

PROBLEMS CONTRIBUTING TO THESE POOR RELATIONSHIPS RANGE FROM SIMPLE TRAFFIC DISPUTES TO HARASSMENT COMPLAINTS.

BUT BY FAR THE MOST COMMON AND VOLATILE OCCURRENCE INVOLVES COMPLAINTS OVER ALLEGATIONS OF EXCESSIVE OR DEADLY FORCE IN CARRYING OUT THE POLICE MISSION.

WE HAVE FOUND THAT THERE IS NO SINGLE ISSUE WHICH FURTHER PROVOKES BOTH MAJORITY AND MINORITY RESENTMENT, OR WHICH HAS MORE POTENTIAL FOR COMMUNITY CONFLICT, THAN THIS ONE. WE RECOGNIZE THAT THERE ARE NO SIMPLE SOLUTIONS TO THIS PROBLEM. BUT EFFORTS TO CLOSE THE GAP IN POLICE/ COMMUNITY RELATIONS MUST BEGIN. THE GRAVITY OF THE ISSUE DEMANDS SOME IMMEDIATE, POSITIVE ANSWERS.

THE PROBLEM IS SO SERIOUS IN TEXAS, FOR INSTANCE, THAT HISPANIC LEADERS AND TOP LAW ENFORCEMENT OFFICIALS FROM ACROSS THE STATE RECENTLY MET FOR TWO DAYS IN SAN ANTONIO IN SEARCH OF SOME SOLUTIONS.

POLICE, MINORITY LEADERS, POLITICIANS, HUMAN RELATIONS, AND CIVIL RIGHTS OFFICIALS MET IN PROVIDENCE, RHODE ISLAND, LAST OCTOBER TO CREATE MECHANISMS TO REDUCE CONFLICT BETWEEN CITIZENS AND THE POLICE.

And last November, Black leaders and police officials from across the Florida Panhandle also met in St. Petersburg, Florida, to address the issue of police use of excessive force.

Local chapters of the NAACP, League of United Latin American Citizens, and many diverse minority groups and organizations are galvanizing around the issue. National Urban League Director Vernon Jordan so seriously views the issue as to request--in one of his recent weekly news columns--that the "Justice Department ... take the initiative by drafting a model code for the use of firearms that local forces should adopt."

And many state agencies and elected officials are also starting to look more closely at the problem.

Comprehensive studies citing each and every instance of excessive or deadly force levied against a Black, Hispanic, or other minority have never been compiled. This makes it difficult to get a handle on the issue. However, every available study points to minorities as disproportionate victims of such force:

- A DETAILED STUDY OF 1500 POLICE KILLINGS BY A NOTED CRIMINAL JUSTICE RESEARCHER CONCLUDED THAT MINORITIES--AND ESPECIALLY BLACKS--WERE COMMON POLICE VICTIMS, AND THAT THE YOUNG BLACK MALE WAS A MOST LIKELY VICTIM;

- A CHICAGO LAW ENFORCEMENT STUDY GROUP REPORTED NOT LONG AGO THAT POLICE IN THAT CITY KILLED A CIVILIAN EVERY 11.9 DAYS AND WOUNDED ONE EVERY 4.3 DAYS IN ONE 44-MONTH PERIOD. THE STUDY ALSO SHOWED THAT A CIVILIAN KILLED A POLICEMAN EVERY 64.1 DAYS AND WOUNDED ONE EVERY 18.2 DAYS.

- A POLICE FOUNDATION REPORT ON DEADLY FORCE, WHICH COVERED SEVEN MAJOR U.S. CITIES, FOUND THAT 80 PERCENT OF THE NONFATALLY SHOT CIVILIANS WERE MINORITIES, WHILE 78 PERCENT OF THOSE KILLED WERE MINORITIES; AND

- A STUDY BY THE OFFICE OF POLICY AND PLANNING IN SEATTLE NOTES THAT WHILE BLACKS ACCOUNT FOR ONLY NINE PERCENT OF THE CITY'S POPULATION, THEY COMPRISED 49 PERCENT OF THE PEOPLE SHOT BY POLICE IN A THREE-YEAR PERIOD.

IN ANALYZING OUR OWN CASES, WE ARE FINDING THAT THERE ARE ALMOST AS MANY UNANSWERED QUESTIONS ABOUT POLICE USE OF EXCESSIVE FORCE AS THERE ARE INSTANCES TO DOCUMENT ITS EXISTENCE.

FOR EXAMPLE, IN TERMS OF SPECIFIC CHARACTERISTICS, WE FIND THAT THE NOTION THAT SUCH CASES ARISE ONLY IN LARGE URBAN AREAS DOES NOT HOLD UP. SUCH INCIDENTS OCCUR JUST AS OFTEN IN SMALL COMMUNITIES AS IN LARGE CITIES. POLICE/ COMMUNITY FRICTION ARISING FROM THE USE OF EXCESSIVE FORCE ISSUE KNOWS NO BOUNDARIES IN TERMS OF CITY POPULATION OR SIZE OF THE MUNICIPAL POLICE FORCE.

PATTERNS OF OCCURRENCE ARE PARTICULARLY DIFFICULT TO DETERMINE. EVEN THE FBI REPORTS DIFFICULTIY IN OBTAINING FULL, ACCURATE, AND RELIABLE STATISTICS FROM LOCAL JURISDICTIONS IN SUCH INSTANCES.

GAUGING THE EFFECT OF CITIZEN PARTICIPATION IS LIKEWISE NOT AN EASY TASK.

We in CRS believe that the existence of citizen boards and councils may result in fewer actual cases primarily because of the extra layer of accountability added. But we are not yet prepared to say that it provides a more substantive review that can be classed as an effective deterrent.

Additionally, in our case analyses - we tried to find answers to these questions: (1) How do alleged excessive use of force cases arise? (2) Is there a definite progression of events that usually occurs? and (3) How much of the community concern over the issue is emotionally based?

First, we learned that these cases do not always arise from an initial life-and-death situation for the police officer. Rather, they arise from a great range of circumstances. While some involved the police response to actual and violent confrontations, others escalated from incidents as innocuous as the writing of a traffic ticket.

THERE DOES NOT SEEM TO BE A USUAL PROGRESSION OF EVENTS LEADING UP TO AN OFFICER'S USE OF DEADLY FORCE. BUT OUR CASES SUGGEST THAT THOSE JURISDICTIONS MOST LIKELY AFFECTED ARE THOSE WHERE RELATIVELY MINOR COMPLAINTS OF HARASSMENT ARE CONSTANT AND LONG-STANDING.

WE ALSO LEARNED THAT EMOTIONS PLAY A PROMINENT ROLE. SOMETIMES CITIZENS BECOME SO OVERLY INVOLVED IN THE EMOTIONAL ASPECTS OF A TRAGIC CASE AS TO OVERLOOK THE MORE UNIVERSAL ISSUES. WE RECOGNIZE THAT THIS EMOTIONAL TACKLING BLOCK IS DIFFICULT TO OVERCOME. HOWEVER, WE HAVE FOUND THAT FAR BETTER RESULTS ARE GAINED IF BOTH SIDES FOCUS ON THE FIREARMS POLICY SYSTEM--RATHER THAN ON THE INDIVIDUAL OFFICER INVOLVED.

FINALLY, WE TRIED TO DETERMINE WHAT GUIDES OFFICERS HAVE IN THEIR AUTHORITY TO USE FORCE ... AND, WHAT LEGAL ISSUES ARE INVOLVED.

IN RESEARCHING THIS ISSUE AND ANALYZING OUR CASES, WE TRIED TO ISOLATE THE VARIOUS TYPES OF GUIDELINES GOVERNING THE OFFICER'S USE OF FORCE.

We found that an officer's decision to use a weapon is historically grounded in strict legal terms. And while these terms are based on society's views of what is reasonable and just, the stark reality of an incident in the street more often than not demands that the officer make a personal decision. And this decision is based on little more than what the officer views as reasonable and just AT THE VERY INSTANT.

As a former law enforcement officer, I know that such an agonizing decision can be fully understood only by the one who has had to make it.

Compounding the problem, we found that state laws limiting a police officer's use of deadly force to arrest a felony suspect are not uniform. Therefore, it is extremely difficult to come up with a performance standard. Basically, there are three categories under which the various state laws fit:

1) Common Law: Under Common Law, which dates back to 15th-century England and 18th-century America, all felonies are punishable by death. So the use of deadly force to arrest a felony suspect is

GENERALLY SANCTIONED. THIS IS OF COURSE, THE LEAST RESTRICTIVE POLICY. TWENTY-FOUR STATES ADOPT THIS APPROACH, BUT 17 HAVE PLACED SUCH VAGUE STATEMENTS AS "REASONABLE BELIEF" OR "SUFFICIENT CAUSE TO ASSUME" INTO THE BOOKS TO FURTHER GUIDE AN OFFICER'S DISCRETION.

2) FORCIBLE FELONY RULE: IN THIS CASE, STATE LAWS SPECIFY THE KINDS OF FELONIES FOR WHICH DEADLY FORCE MAY BE EMPLOYED; OR THEY MANDATE THAT ONLY "FORCIBILE FELONIES" JUSTIFY FORCE. SEVEN STATES ADOPT THE FORCIBLE FELONY APPROACH.

3) MODEL PENAL CODE APPROACH: HERE, THE TECHNICAL CLASSIFICATION OF A CRIME SUCH AS A MISDEMEANOR OR A FELONY IS IGNORED: THE NEED TO APPREHEND SUSPECTS VS. THE SAFETY OF THE ARRESTING OFFICER VS. THE VALUE OF HUMAN LIFE. IN OTHER WORDS, THE MODEL PENAL CODE APPROACH IS ONE BASED ON THE DANGER TO THE SUSPECT AND THE OFFICER, AND TO SOCIETY ON TH WHOLE. SEVEN STATES ADOPT THIS APPROACH.

TWELVE STATES HAVE NO JUSTIFICATION STATUTES LIMITING AN OFFICER'S USE OF DEADLY FORCE. NONUNIFORMITY IS EVIDENT. SOME STATES FOLLOW THE COMMON LAW APPROACH; OTHERS FOLLOW THE FORCIBLE FELONY RULE; OTHERS THE MODEL PENAL CODE APPROACH; WHILE OTHERS HAVE NO STATE JUSTIFICATION AT ALL ON DEADLY FORCE.

STILL FURTHER COMPOUNDING THE PROBLEM IS THE LACK OF CONSISTENCY IN THE CLASSIFICATION OF CRIMES BY THE VARIOUS STATES. WHAT IS CONSIDERED A FELONY IN ONE STATE MIGHT BE A MISDEMEANOR IN ANOTHER, AND IN A THIRD MAY NOT EVEN BE A CRIME.

WE FOUND FOR EXAMPLE, THAT A SUSPECT'S RUNNING FROM THE POLICE IS A FELONY IN ONE OF OUR NORTHWESTERN STATES REGARDLESS OF THE SUSPECTED MINOR CRIME. IN OTHER STATES, MINOR OFFENSES SUCH AS TRAFFIC VIOLATIONS DO NOT PERMIT USE OF DEADLY FORCE IN THEIR ENFORCEMENT.

IN REVIEWING THE GUIDANCE GIVEN POLICE OFFICERS ON THIS ISSUE, WE ALSO FOUND A DEFINITE TREND EMERGING THAT INDICATES LOCAL POLICE DEPARTMENTS ARE VOLUNTARILY IMPOSING MORE STRINGENT LIMITATIONS ON THEIR OFFICERS THAN ARE REQUIRED BY STATE LAWS. MORE RESTRICTIVE FIREARM POLICIES AND THE

LIKE HAVE RESULTED FROM SUCH SELF-IMPOSED EFFORTS.

BECAUSE THIS ISSUE IS MOST DESTRUCTIVE TO GOOD RACE RELATIONS, I HAVE UNDERTAKEN AN AGENCY EFFORT TO HELP POLICE DEPARTMENTS AND MINORITY COMMUNITIES TO BETTER UNDERSTAND THE IMPLICATION OF THIS ISSUE, AND THEREBY TO DEVELOP BETTER WORKING RELATIONSHIPS.

THIS WORKSHOP IS PART OF THAT EFFORT.

MOREOVER, WE HOPE TO OBTAIN INFORMATION ON SUCH THINGS AS:

- STATISTICAL STUDIES ON THE FREQUENCY OF POLICE/MINORITY INCIDENTS IN STATES UTILIZING DIFFERENT JUSTIFICATION STATUTES AND POLICES ON THE USE OF FORCE;

- STATISTICS ON THE NUMBER OF POLICE KILLED BY MINORITIES AND MINORITIES KILLED BY POLICE--WITH BREAKDOWNS AS TO THE CIRCUMSTANCES INVOLVED; AND

- POLICE FIREARMS POLICIES AND POLICE/MINORITY INCIDENTS THAT HAVE OCCURRED SO THAT A COMPARATIVE ANALYSIS OF POLICIES MAY BEGIN.

I HOPE THAT THROUGH THIS WORK WE WILL BE BETTER ABLE TO UNDERSTAND THE DEGREE OF THE PROBLEM WHICH IS BEING CAUSED BY A SMALL PERCENTAGE OF THE OFFICERS ON POLICE FORCES, AND BE BETTER ABLE TO HELP YOU WITH IT.

BESIDES ASSISTING LAW ENFORCEMENT OFFICIALS AND ADMINISTRATORS, WE ENVISION WORKING WITH A NUMBER OF OTHER GROUPS, SUCH AS THE NAACP, THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, AND OTHER GROUPS WHO HAVE ALREADY MADE THIS A PRIORITY ISSUE.

WE HOPE THAT BY WORKING WITH THESE GROUPS AND THOSE LIKE THE NABCJ WE MAY JOINTLY ARRIVE AT A SOLUTION THAT ESTABLISHES GREATER TRUST AND RESPECT BETWEEN AND AMONG US ALL, ONE LEADING TO PEACEFUL, PRODUCTIVE, AND FIRM RELATIONSHIPS.

SUCH AN EFFORT IS LONG PAST DUE.

THANK YOU VERY MUCH.